

## The Essential Characteristic of Safety as a Category of Right

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### ABSTRACT

The relevance of the study is conditioned by the reassessment of the value of security as the basis for sustainable development of civil legal relations, ensuring the protection of the vital interests of the individual, society and state, as well as the preservation of civil peace, political and social stability in society. The purpose of the article is to give the safety's essential characteristics as the civil law category. The leading methods are comparative-historical and comparative-legal. The empirical base of the research is the normative legal acts of the Russian Federation on security. Core findings include: historical stages in the understanding process of security's essence are identified (antique, Christian, Reformation, Enlightenment, classical, neo-classical); Security's essence is disclosed as the state of absence of danger and versatile process for protection of the vital interests of the individual, society and state from internal and external threats; the basic safety features are revealed (generality, comprehensiveness, universality, multi-functionality); the basic directions of the civil right safety regulation are distinguished. This study provides important findings. Firstly, security's civil right regulation provides the legal protection of the vital interests of the rights' entities in connection with the entry into the sphere of legal relations. Second, it is the basis to confront the external and internal threats to the vital interests of the individual, society and the state by legal tools. Third, it creates conditions for strengthening of the inviolability of state-legal system and order, evolution of right and the state to the social ideals. The paper Submissions can be useful for those who are engaged in legislative activities. legal practice. teachers of legal disciplines.

### KEYWORDS

Legal protection of the vital interests, civil legal regulation of safety, the right to safety

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## Introduction

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The relevance of the study is reasoned by the increasing value of the security as the global values of humanity. The spread of terrorist threats led to a new look at security as a condition of protection of the vital interests of the individual, society and state from internal and external threats. For a long time, safety has been a priority, the monopoly of the political leadership of the country. Therefore, research and development of safety problems began to appear only with the 1980s (Galuzin, 2007). Before this period, only the "Great Soviet Encyclopedia", among the existing public sources, gave the interpretation of the concept of "security" as countering to external military dangers and threats (Prokhorov, 1970). The Federal Law of the Russian Federation "On Security" on March 5, 1992 N 2446-I (declared void by the Federal Law of December 28, 2010 N 390-FZ) it was the first time when at the legislative level is determined that the security is a state of protection of the vital interests (i.e., the aggregate needs that reliably ensures the existence and possibility of progressive development) of the person (rights and freedoms), society (material and spiritual values) and the state (constitutional system, sovereignty and territorial integrity) from internal and external threats (Law of the Russian Federation "On safety" of 05.03.1992). As a security principle is considered the principle of respect for the balance of the vital interests of the individual, society and state. The vital interests are invited to be understood as a set of needs that reliably ensures the existence and possibility of progressive development of the individual, society and state. The validity of this principle is dictated by the essence of the right which is human-centered, as well as the influence of international legal principles and the rule of law (Demenishin, 2011). The current Federal Law of the Russian Federation "On Security" unfortunately hasn't the definitions of the fundamental concepts of "security", "threats for security", "object of security", "security system" (Law of the Russian Federation "On safety" of 28.12.2010). The lack of definitions of these legal concepts in the federal law "On security" entails difficulties in their understanding, which can adversely affect both as the lawmaking so the law enforcement activities of the state. The lack of legal definitions can lead to fragmentation of the definitions at different levels of legislative consolidation, which is a very negative phenomenon within a given legal concept of modernization. Revision of priorities in security problems' solving and their transferring on the person's interests, lack of definitions of "security", "threats for security", "objects of security", "security system" in the federal law "On security" put forward the science and practice in front of the need to develop a completely new aspect of the problem - understanding of the essence of security as a civil law category. In the legal system, to any of its manifestation, and item a common understanding of the problems should be used and contradictions should be minimized and eliminated. In view of existing processes of legal modernization conceptual models to improve the concept of "security" should be developed and implemented.

In philosophy, the category is regarded as a fundamental concept, reflecting the most significant connections and relationships of objective reality and cognition (Il'ichev et al., 1983). Security is one of the integrative categories of modern science. Categorical sense of security is reasoned by the fact that all areas of human life activities include all sorts of danger. And for optimal implementation of socio-economic projects and reforms an adequate assessment of their impacts is necessary, including safety's criteria and indicators (Shafirov, 2004). The purpose of research is to give the essential characteristics of the safety as the civil law category. The conditions to achieve the goal are the following tasks' solving: to find out the historical stages in the process of understanding of the security's nature; disclose

the nature of security as a condition of absence of danger and versatile process for the protection of vital interests of the individual, society and state from internal and external threats; to identify the main characteristics of the security; identify the main areas of civil right safety regulation.

### Research methodology

The leading approaches to the study are systematic and process approach. The process of values' revaluation in our society leads to a new understanding of security issues. The main thing is the sense of the systemic nature of the security and therefore the need for a systematic approach to its study. The content and the degree of security of personality, society, and the state are in direct relation to the functioning of all the socio-economic structures: economic, political, social, legal and spiritual. As a result, the security system becomes a very complicated structure, in which can be distinguished the respective components or subsystems: personal security system during the life activities; environment protection system (the biosphere); public security system; global security system. However, security system is the result of the security process of the vital interests of the individual, society, state and countering to various threats; ensuring of the maintenance of optimal parameters of life activities of the person, society and state. This allows considering of security as a continuous process of special actions and tools for the protection of the individual, society and state, their property, natural objects from various dangers.

During the research theoretical (scientific analysis of special literature, analysis and synthesis, induction and deduction, abstraction and concretization) and special (historical, formal and legal, comparative and legal, technical and legal) methods were used.

The empirical base of the research is the normative legal acts of the Russian Federation on separate security types: more than 70 federal laws and 200 decrees of the President of the Russian Federation, about 500 resolutions of the RF Government, and other regulations. Most of them are fragmented, concerns private threats and breeds local scattered uncoordinated array of legal rules relating to the various branches of law. The latter is connected with the fact that security issues pervade virtually all aspects of public relations and can objectively be subject for regulation in any of the existing branches of law (Demenishin, 2011).

### Results

The main results of this study are: 1) The essence of security as a condition for absence of danger and versatile process for the protection of vital interests of the individual, society and state from internal and external threats; 2) the main characteristics of the security; 3) the main areas of civil right safety regulation.

#### ***The essence of security as a condition of absence of danger and process for versatile protection of vital interests of the individual, society and state from internal and external threats***

In the explanatory dictionary of S.I. Ozhegov (2011) security is defined as a condition in which there is no danger, there is protection from danger. In modern Great Dictionary of Russian Language the security is defined as the absence of danger, threat, safety and danger - as a threat of the disaster, tragedy, catastrophe (Kuznetsov, 2000). In applicable federal law of the Russian Federation" On



Security" it is stressed that it defines the basic principles and content of the activities to ensure the security of the state, public security, environmental security, personal security, and other types of security stipulated by the Russian legislation. And there the basic principles of security are declared: respect for and protection of the rights and freedoms of man and citizen; rule of law; systematic and comprehensive use of political, organizational, socio-economic, informational, legal and other measures to ensure safety by federal authorities of state power, bodies of state power of Russian Federation's entities, other state bodies, local self-government authorities; priority of preventive measures to ensure the safety; interaction of federal authorities of state government, authorities of state power of the Russian Federation, other state bodies with public associations and international organizations (Law of the Russian Federation "On safety" of 28.12.2010).

It is found that the security's essence is in the absence of dangers for entities of objective reality (individual, society, state) and the process of providing of versatile protection of their vital interests against internal and external threats. It is found that the vital interests of the subjects of objective reality include:

- personality - the constitutional rights and freedoms, and a set of socio-economic, legal guarantees for their implementation, resource provision of life activities, quality of life (Pugacheva et al., 2016a);
- society - material and spiritual values, stability and balance of the system of social relations, the unity of the interests of social groups and the sustainability of their productive interaction, guarantee of the possibility to counter threats and potential challenges, strengthening of the rule of law, civil society development (Yepaneshnikov et al., 2016);
- state - the constitutional order, sovereignty and territorial integrity, international cooperation, national interests, the legitimacy of the government, the sustainability of development (Ivanov et al., 2016).

### ***Safety core characteristics***

7-21 December 2010 Levada Center conducted a survey on a representative sample of 1.611 Russians aged 18 years and older in 133 settlements of 45 regions of the country. Accuracy of data from these studies does not exceed 3.4 percent. More than half of Russians surveyed (56 percent) expressed a preference for safety; and the respondents did not bother even the fact that in order to achieve security they might "have to go to some violations of democratic principles and restrictions on personal freedoms." According to the poll, 13 percent of respondents believe that the concept of security is contrary to the concept of freedom (Demenishin, 2011). Based on the results of this survey, Decree of the President of Russia "On the Russian Federation's National Security Strategy till 2020", the main security features are identified: 1) generality, which allows to consider security as a public good that meets the interests of the individual, society and state; 2) comprehensiveness, providing state of the absence of hazards, threats to personality, society, the state; 3) universality, which expresses a person's right to safety and quality of life; 4) multifunctionality, causing reliability of the process for versatile protection of the vital interests of the individual, society and state from internal and external threats (Decree of the President of the Russian Federation of 12.05.2009 Volume 537 "On the Russian Federation's National Security Strategy till 2020.")

### *The main directions of civil legal safety regulation*

Clarification of the safety's nature and its basic characteristics allowed us to identify the main areas for civil-legal regulation of this phenomenon:

1) personal safety, aimed at protecting of the inalienable rights and freedoms of man and citizen and other intangible benefits, improving of the quality of life, ensuring of the availability of high-quality and safe goods and services (Lunev, Pugacheva & Stukolova, 2014);

2) food security, including ensuring of continued access for all categories of citizens to the necessary for a healthy lifestyle number of safe food, as well as a guaranteed supply of high-quality and affordable medicines (Galuzin, 2007);

3) public safety, providing secure of stable social relations involving participation in corporate organizations or their management (Corporate Affairs), contractual and other obligations (Pugacheva et al., 2016b) ;

4) proprietary security, including ensuring of the order to the property rights and other proprietary rights, and rights on the results of intellectual activities and equated means of individualization (intellectual property rights) (Demenishin, 2011);

5) economic security, aimed at determining of the legal status of participants in civil turnover, freedom of business activity (Terentyeva et al., 2016);

6) information and psychological safety - awareness by the individual of negative information and psychological influences and information and psychological self-defense skills (Demenishin, 2011);

7) civil security - awareness by the personality of the negative impacts as on the entity of legal, moral and political, social and economic relations; self-defense abilities and skills to ensure successful implementation of the constitutional rights and freedoms, performance of duty and civic responsibility for the community (Petrova et al., 2016b);

8) physical security - promotion of healthy lifestyles - compliance with physiologically optimal regime of labor and rest, good nutrition, a sufficient level of physical activity, compliance with the rules of personal and public hygiene, environmental protection, useful for the individual leisure activities, compliance with the rules of Mental Health;

9) security of the personality in an emergency situation, as such as human relationship with the objects of the external environment in which the unplanned (unexpected) changes will not lead to loss of life, health or property (Shafirov, 2004);

10) industrial Safety - system of interaction of the person with the objective working environment in the implementation of production tasks, including understanding of potential risks and dangers to personal and others' health, as well as the abilities and skills for safe work, accidents' prevention, maintenance of reliable state the objective components of the system, and aimed at improving of the production's level (Galuzin, 2007);

11) the legal security, which provides in the result of the implementation of legal measures, ways and means of legal support a legal status of protection (warranty) of vital interests (status, options) of legal entities from external and internal legal risks in connection with the entry into the sphere of legal space, which provides targeted social and legal activity of the participants of legal relations (Demenishin, 2011).



## Discussions

The essential characteristic of the security as the right category is the subject of scientific debate. Obviously, this is due to the safety's subjective and objective components. The subjective component is conditioned by the basic human need for security and the sense of it on the basis of subjective cognitive and emotional evaluation of the situation as potentially dangerous, uncertain (Maslow, 1959; Horney, 1991; Murray, 2007). Charles Montesquieu writes that political freedom is in our security or at least in our belief that we are safe (Montesquieu, 1999). It is considered to be appropriate to refer to the well-known Zh. Shtudmann's saying that it is the human dimension is the cornerstone of a comprehensive concept of security (Stoudmann, 2000).

The objective component of security is conditioned by the necessity of its maintenance. In the wording of G. Kelzen (1967) the security ideal comes down to its being a component of the rule of law, creating the conditions under which judicial decisions are foreseeable and calculated by their addressees, the creation of common legal rules is fully centralized, and the courts are limited only by their application in specific cases. Speaking on democracy in the modern world D.A. Medvedev (2010), as one of the standards of the modern state, points on the state's ability to protect its citizens. Analysis of normative legal acts shows that it is possible to distinguish five interpretations of security's essence depending on the scope of use of the concept. According to the first security is a state of protection of the vital interests of the individual, society and state in a certain area. According to the second, under the safety legislator understands a set of legal, engineering, organizational, technical and special measures to prevent the loss of certain benefits. The third view defines security as the absence of unacceptable risk in all processes or stages associated with the possibility of damage. According to the fourth point of view the safety is associated by the legislator with the property, ability of the objects to retain their properties at the negative impacts on them. The fifth point of view defines security as a condition of reasonable certainty that under normal conditions a certain benefit is not dangerous and is not affected by itself. However, a common understanding of terms is one of the basic rules to ensure right's logic in legal technique (Demenishin, 2011). M.V. Kostromicheva (2010) notes that the violation of this axiomatic rule confuses those who are addressed legal documents, and eff.

We believe that a true understanding of security as a category of right is possible only on the basis of subjective and objective components. Therefore, the leading research approaches are systemic and process approach, allowing considering of security as a purposeful system to ensure dynamically stable state of citizens, society and the state, which guarantees protection against internal and external threats and the possibility of progressive development.

## Conclusion and Recommendations

It is found that in all historical stages of understanding of the essence of the category "security" (the ancient, Christian, Reformation, Enlightenment, classical, neo-classical), its contents include: the desire to preserve and protect life; human need for security, the improvement of conditions of survival; the desire to avoid hazards and eliminate risks; waiting for protection from external and internal threats; condition of successful functioning and development.

The essence of security as a condition of absence of danger and process for versatile protection of the vital interests of the individual, society and state from



internal and external threats allows us to select its entities and basic facilities. Security subjects are a person, society and the state. Persons exercising their constitutional rights and freedoms do not prejudice the legitimate rights and interests of other subjects on the peaceful enjoyment of life, health and physical freedom. The society, through voluntarily formed non-state structures in the various spheres of life activities, provides the conditions for self-realization of citizens and groups, the recognition and protection of private interests and needs, inalienable human rights, the possibility of their judicial protection. The State exercises its functions through the legislative, executive and judicial powers and provides the stability of the rule of law, the supremacy of the law, the inviolability of human rights and freedoms. Security does not exist by itself, in isolation from human life activities. Security objects are the constitutional rights and freedoms; material and spiritual values; constitutional order, sovereignty and territorial integrity.

Safety core characteristics (generality, comprehensiveness, universality, versatility) allow to speak about it more predictable nature; peremptory focus on civil rights and freedoms that define the content of the work for all branches of power, providing favorable conditions for work and recreation, public safety, the efficient functioning of the activities of state bodies, public associations, enterprises and institutions, as well as the protection of the right of each life activities' entity on the security.

The main directions of safety's civil legal regulation are aimed at maintaining of a balance between the public interest of the state, society and the private interests of entities, which is an essential prerequisite for a fair trial. The meaning of safety's civil legal regulation is to minimize the risk of occurrence of damage to the interests of the individual, society and state; ensuring of the effective functioning and development of civil – legal relations, as well as the security and assurance of civil and legal status of all entities of life activities (individual, society, state).

The safety's essential characteristic as a civil law category allows, first, to consider the safety as a state (result), so the process of its maintenance; secondly, to speak about legal protection (security, warranty) of vital interests of legal entities in connection with their entry into the sphere of legal relations; thirdly, to claim about the possibility to resist external and internal threats to the vital interests of the individual, society and the state by legal means; fourth, to strengthen the inviolability of state-legal system and order, promote the evolution of law and the state to the social ideals; fifthly, to make a base for sustainable development of civil-legal relations, ensuring the protection of the vital interests of the individual, society and state, the preservation of civil peace, political and social stability in society.

In the view of the results obtained we can identify a number of safety's scientific issues requiring further consideration within the law: the essence and content of legal security; legal means to ensure the safety of civil law; security as the basis for stability of the system's development of civil law relations.

### Disclosure statement

There was no potential conflict of interest reported by the authors.

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